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Supreme Court, U.S.
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No. 06-115

IN THE

Supreme Court of the United States

JOSEPH L. ROBERTO,
Executor of the Estate of Joseph R. Roberto,

Petitioner,

v.

MATILDE DLG FEJERAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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The question presented by the petitioner is based on the premise that (1) the appeal to the Ninth Circuit was timely filed and (2) that the appeal raised issues involving the United States Constitution, treaties and statutes and therefore the Ninth Circuit had jurisdiction over the appeal from the Commonwealth Supreme Court.

For the following reasons, the appeal to the Ninth Circuit was not timely filed and did not involve issues of the United States Constitution, treaties and statutes.

PROCEDURAL HISTORY RELEVANT TO JURISDICTION

On November 14, 2003, the Commonwealth Supreme Court issued its Opinion. Petition for Certiorari, App. 2.

On November 28, 2003, the Executor/Appellant filed a Motion to Extend Time to File Petition for Rehearing.

On December 4, 2003, the Commonwealth Supreme Court granted an extension of time to file Petition for Rehearing.

On December 12, 2003, the Executor/Appellant filed his Petition for Rehearing in the Commonwealth Supreme Court.

On April 27, 2004, the Executor/Appellant filed a Motion to Dismiss Petition [for Rehearing] in the Commonwealth Supreme Court.

On April 30, 2004, the Executor/Appellant filed the Notice of Appeal to the Ninth Circuit from the November 14, 2003, Opinion of the Commonwealth Supreme Court.

On May 12, 2004, the Commonwealth Supreme Court denied the Executor/Appellant's Petition for Rehearing.

THE NOTICE OF APPEAL WAS NOT TIMELY FILED

The notice of appeal to the Ninth Circuit was filed on April 30, 2004, more than 30 days after the November 14, 2003, opinion from which the appeal was taken. Therefore, the notice of appeal was not timely filed in accordance with Rule 4(a)(1)

of the Federal Rules of Appellate Procedure. *See also*, Circuit Rule 6-1(a)(ii).

Circuit Rule 6-1(b)(i) provides the following:

> If a timely petition for rehearing under Rule 40 of the Rules of Appellate Procedure of the CNMI Supreme Court is filed in the CNMI Supreme Court, the time for appeal to this court shall run from the entry of the order denying the petition.
>
> A notice of appeal filed after announcement or entry of the judgment but before disposition of a petition for rehearing is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the petition for rehearing.
>
> Appellate review of an order disposing of the petition for rehearing requires the party to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file an amended notice of appeal within the time prescribed by FRAP 4(a)(1), 4(a)(3), and 4(a)(5), measured from the date of entry of the order disposing of the petition for rehearing....

Circuit Rule 6-1(b)(i)(paragraphing added).

The Executor/Appellant filed a timely petition for rehearing in the Commonwealth Supreme Court.

The Executor/Appellant filed a notice of appeal to the Ninth Circuit on April 30, 2004, i.e., after the November 14, 2003, judgment and before the May 12, 2004, disposition of the petition for rehearing.

Therefore, the April 30, 2004, notice of appeal to the Ninth Circuit was ineffective to appeal from the November 14, 2003, judgment specified in the notice of appeal, until the date of the

entry of the order disposing of the petition for rehearing, i.e., until May 12, 2004.

However, on May 12, 2004, the United States Court of Appeals no longer had jurisdiction over appeals from the Commonwealth Supreme Court. COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, Art. IV, Section 403(a). The appellate jurisdiction of this court to review CNMI Supreme Court judgments ran "for fifteen years from the establishment of the CNMI Supreme Court. 48 U.S.C. 1801 (Commonwealth Covenant, art. IV, Section 403(a)." *Santos v. Nansay Micronesia, Inc.*, 76 F.3d 299, 301 (1996). The Commonwealth Supreme Court, the appellate court of the Northern Mariana Islands, was established May 2, 1989. Therefore, effective May 2, 2004, the Ninth Circuit no longer had appellate jurisdiction over decisions of the Commonwealth Supreme Court.

Thus, the United States Court of Appeals for the Ninth Circuit has no jurisdiction over this appeal.

FEDERAL QUESTIONS WERE NOT RAISED OR DECIDED BY THE COMMONWEALTH SUPREME COURT IN ITS NOVEMBER 14, 2003, DECISION

Furthermore, federal questions were neither raised nor decided by the Commonwealth Supreme Court in its November 14, 2003, decision. *See, Estate of Dela Cruz*, 279 F.3d 1098 (9th Cir. 2002); *Milne v. Hillblom*, 165 F.3d 733 (9th Cir. 1999); *Castro v. Hotel Nikko Saipan, Inc.*, 96 F.3d 1259 (9th Cir. 1996); *Santos v. Nansay Micronesia, Inc.*, 76 F.3d 299 (9th Cir. 1996).

The Ninth Circuit has no jurisdiction to review the decisions of the Commonwealth Supreme Court on Commonwealth law. *See, Santos v. Nansay Micronesia, Inc.*, 76 F.3d 299 (9th Cir. 1996); *Castro v. Hotel Nikko Saipan, Inc.*, 96 F.3d 1259 (9th Cir. 1996); *Diamond Hotel Co., Ltd. v. Matsunaga*, 99 F.3d 296 (9th Cir. 1996).

In the *Diamond Hotel* case, the Ninth Circuit refused to review the Commonwealth Supreme Court decision because "the primary issue in this case involves an interpretation of Article XII of the Commonwealth Constitution." *Diamond Hotel Co., Ltd. v. Matsunaga*, 99 F.3d 296, 298 (9th Cir. 1996).

The Ninth Circuit has held that Article XII of the Commonwealth Constitution is not federal law. *See, Yokeno v. Mafnas*, 973 F.2d 803, 805-809 (9th Cir. 1992); *Sablan v. Manglona*, 938 F.2d 970 (9th Cir. 1991).

The decision of the Commonwealth Supreme Court in this case "simply does not involve the Constitution, the treaties, or the law of the United States in the manner required for [this court] to exercise appellate jurisdiction." *See, Commonwealth of the Northern Mariana Islands v. Campbell*, 42 F.3d 546, 550 (9th Cir. 1994).

Although the Executor raised issues of due process in his Petition for Rehearing in the Commonwealth Supreme Court, the Executor did not appeal the Denial of Petition for Rehearing, dated May 12, 2004. *See also*, Circuit Rule 6-1(b)(i).

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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